

# **CROFTING REFORM (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Crofting Reform (Scotland) Bill introduced in the Scottish Parliament on 9 December 2009:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 35–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

4. The Bill makes provision to reform and rename the Crofters Commission and to modify its statutory functions. It will establish a new map-based Crofting Register that will be maintained by the Keeper of the Registers of Scotland, and which will be developed over time through regulatory trigger points that will require crofts to be registered. The Bill defines a category of owner-occupiers known as “owner-occupier crofters” and imposes duties on them and on tenant crofters in relation to residency, misuse and neglect of crofts. The Bill also amends provisions in the Crofters (Scotland) Act 1993 (referred to in these Explanatory Notes as “the 1993 Act”) on decrofting, resumption, re-letting of vacant crofts and on obtaining consent to certain regulatory matters. A number of other minor and technical amendments to crofting law are made.

### **PART 1 – REORGANISATION OF THE CROFTERS COMMISSION**

#### *The Crofting Commission*

#### **Section 1: The Crofting Commission**

5. Subsection (1) renames the “Crofters Commission” the “Crofting Commission” to reflect the changes in function as described in section 2 of the Bill. Subsection (3) replaces schedule 1 of 1993 Act with a new schedule 1. Subsection (4) states that where reference is made to the Crofters Commission in any enactment that this is a reference to the Crofting Commission unless there is a clear intention to the contrary.

#### **Section 2: General functions of the Crofting Commission**

6. Section 2 of the Bill relates to the general functions of the Commission and makes amendments to the general functions that were conferred on the Crofters Commission under the 1993 Act. Subsection (1) replaces section 1(2) of the 1993 Act. The effect of this replacement is that the Commission will continue to have responsibility for reorganising, regulating and for keeping under review matters relating to crofting. The Commission will also be responsible for promoting the interests of crofting, however, the Commission will no longer have responsibility for the development of crofting, which was transferred to Highlands and Islands Enterprise on 1 April 2009 through administrative means.

7. Subsection (2) inserts four new sections into the 1993 Act – sections 2A, 2B, 2C and 2D. Section 2A enables the Scottish Ministers to confer, remove and modify the functions of the Commission by order, however subsection (2) only permits such changes where it is appropriate to do so to ensure that the Commission carries out its functions efficiently and effectively. New section 2B requires the Commission to report on its performance, and the Commission is also required to assess the issues affecting crofting communities and the contribution crofting has made to sustainable development. In carrying out this requirement, the Commission is required to consult each local authority in the area where there are crofts and Highlands and Islands Enterprise. The Scottish Ministers are required to lay a copy of the annual report before the Scottish Parliament with any appropriate comments.

8. Section 2C requires the Commission to produce a plan setting out its policy on how it proposes to carry out its functions. This plan must be submitted to the Scottish Ministers within 6 months from the day after the first election of members of the Commission or the day after subsequent elections. This will enable members to create policies as to the running of the Commission once they are appointed. Subsection (3) requires that the Commission consult with each local authority in areas where there are crofts, Highlands and Islands Enterprise and any other persons or bodies the Commission considers appropriate before preparing its plan. Subsection (4) allows Ministers to approve the plan or reject it and direct the Commission to submit a revised plan. Furthermore, subsection (7) requires that where the Commission wish to vary their plan, they must consult on the new proposal and seek Ministers' approval, as outlined in subsections (3) and (4). Once approved, the Commission must make the plan available, as outlined in subsection (5).

9. Section 2D refers to the status of a plan approved under section 2C and obliges the Commission to have regard to its approved plan when discharging any of its functions. Also, where the Scottish Land Court is considering an appeal against a decision by the Commission, they too may have regard to this plan.

## **PART 2 – THE CROFTING REGISTER**

### *Duty to establish and maintain register*

#### **Section 3: The Crofting Register**

10. Section 3 provides for the establishment of a new public register of crofts to be held by the Keeper of the Registers of Scotland (referred to hereafter as “the Keeper”). Subsection (2) provides for this register to be known as the “Crofting Register”. At present, section 41 of the 1993 Act confers responsibility on the Commission to compile and maintain a Register of Crofts. This register is an administrative register, does not contain maps or information on the boundaries of crofts and often relies upon crofters and owner-occupiers informing the Commission when there is a change to the extent of, or interests in the croft. The Commission will maintain the Register of Crofts until such time as it has been completely replaced by the Crofting Register. The Commission will continue to keep administrative records of regulatory decisions it has taken in relation to crofts, however, the new Crofting Register will provide a definitive and current record of the extent of, and interests in, a croft. Once the Crofting Register is complete, it will be necessary to repeal the provisions relating to the current register.

## *Registration*

### **Section 4: First registration**

11. Section 4 outlines the circumstances under which a croft may be registered for the first time on the Crofting Register. Where details of a croft are not registered on the Crofting Register, subsection (1) requires that the croft must be registered in the following instances: upon the creation of a new croft, subject to section 3AA of the 1993 Act (see paragraph 37), on a determination made under section 3A(1) or (2) of the 1993 Act; upon the transfer of any ownership of land on which a croft is situated; and in the event of a regulatory trigger that is identified under subsection (3). Under subsection (2), an unregistered croft may be registered voluntarily.

12. Subsection (3) sets out the trigger events which will require the first registration of a croft. These trigger events relate to an application for a regulatory decision that would impact on the extent of a croft or the interests in a croft. In some cases, the trigger event relates to the giving of notice to the Commission under the 1993 Act.

13. The person who has responsibility for the first registration of a croft will vary depending on the regulatory trigger. For example, if a new croft is established then the applicant will be required to register the croft. This may be either the landowner or the tenant. In the event of the transfer of ownership of land upon which a croft is situated, the new landowner will be responsible for registering the croft. Where crofters make an application to the Commission to exchange their crofts, or part of their crofts, the exchanging crofters will be required to register their crofts. If an assignation triggers the first registration of a croft then the applicant crofter will be required to register the croft. The Crofting Commission would not take forward a regulatory application it receives unless a registration form has been received for the croft that is the subject of the regulatory application

14. Subsection (4) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring first registration. Subsection (5) defines what is meant by the terms “croft”, “first registration” and “new croft”.

### **Section 5: Registration of events affecting registered crofts**

15. In order to ensure that any changes to the extent of, or interests in, a croft are captured in the Crofting Register, this section outlines the circumstances in which the Crofting Register must be amended. Subsection (1)(a) states that where there is a transfer of the ownership of land, the register must be amended. Subsection (1)(b) sets out trigger events which will require an amendment to the registration of a croft(s).

16. Subsection (3) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring amendment to the Crofting Register. As outlined in paragraph 13, depending on the associated regulatory application, the person applying to register the croft, or in this case amend the register will vary.

## **Section 6: Applications for registration**

17. Section 6 outlines the process for registering an interest in a croft or, where a croft has already been registered, the process for amending this registration. Subsection (1) states that an application to register a croft must be submitted to the Crofting Commission along with registration payment.

18. Subsection (2) indicates the timings by which an application to register an unregistered croft must be submitted. Where an application is made to create a new croft under 3A of the 1993 Act, the registration form is submitted at the same time as the regulatory application. In the case of the transfer of the ownership of land upon which crofts are situated the register must be updated as soon as reasonably practicable after ownership is transferred. In the case of a regulatory event as outlined in section 4(3) of the Bill, an application for first registration must be submitted at the same time as the regulatory application is submitted to the Commission, or in the event of a bequest, where the Commission is given notice of the acceptance of the bequest.

19. Subsection (3) outlines the timings by which an application to amend an existing croft registration must be submitted. In the case of the transfer of ownership of any land upon which there are registered crofts, the Crofting Register must be updated as soon as reasonably practicable after ownership has transferred. In the case of a trigger event outlined in section 5(2), the application must be submitted as soon as reasonably practicable following the event.

20. Subsection (4) requires the Commission to check the information contained in the registration application against the Register of Crofts and, if content, forward this with any comments and registration payment to the Keeper. The process to be followed in relation to a first registration of a new croft differs from the process in other cases (see paragraph 37). Subsection (5) enables the Commission, before forwarding the registration to the Keeper, to request further information in relation to the application. Subsection (6) outlines the circumstances in which the Commission can refuse to forward an application. These are: the applicant has not provided the Commission with further information as requested under subsection (5); the applicant has not submitted payment for registration; or the Keeper would be unlikely to accept the application under section 7(2) (e.g. because it was frivolous or vexatious). Where the Commission refuses to forward an application, the applicant may appeal against that decision to the Land Court. Subsection (8) allows the Scottish Ministers to make regulations about when the transfer of ownership occurs for registration purposes.

## **Section 7: Acceptance of applications for registration**

21. Section 7 outlines the circumstances in which a registration application should be accepted. Whilst subsection (1) requires the Keeper to accept a registration application provided it is accompanied by any documents and other evidence that the Keeper requires, subsection (2) outlines the circumstances by which the Keeper can reject an application. The grounds for rejecting an application are that: the boundary of the croft is not sufficiently described by an Ordnance Survey map or such other map required by the Keeper; the application is frivolous or vexatious; where the application is to amend the registration of a registered croft, the application does not refer to the title sheet of that croft; or no registration fee has been tendered.

22. Subsection (3) requires the Keeper to note the date of receipt of registration. Subsection (4) states that the date of receipt of registration will be deemed the date of registration where, under subsection (5), the application has been accepted by the Keeper (or where it was not initially accepted, has subsequently been accepted) and where under subsection (6) there has been no challenge to the registration under section 12(1) or, where such a challenge was made, the application has been abandoned or the Court has decided to either make no order or make an order under section 12(2)(b). In the latter case, the Keeper will be informed of any amendment required to the registration.

### **Section 8: Completion of registration**

23. Subsection (1) requires the Keeper to complete registration for a new registration by making a title sheet for it, or where the croft is already registered, by amending the title sheet and in both cases by making consequential changes to the register as necessary (for example, where ownership of land is transferred, the name of the landowner featured on the title sheet would be amended accordingly). Under subsection (2), the applicant receives a certificate which confirms the registration of a croft; advises that, in the case of the first registration of a croft (other than a new croft), the registration is open to challenge; and contains such other information as the Keeper considers appropriate. The process to be followed in relation to a first registration of a new croft differs from the process in other cases (see paragraph 37). Subsection (3) requires the Keeper to send a copy of the certificate to the Commission in the event of a first registration. Under subsection (4), a registration certificate is sufficient evidence of the registration of the croft.

### **Section 9: Completion of registration: further provision on first registrations**

24. Section 9 applies to the first registration of a croft that is not a new croft (due to the slightly different process involved in registering a new croft, registration of a new croft is complete once section 8 has been complied with). Under subsection (3) the Keeper is required to amend the register in the event that the Commission take a decision in respect of a regulatory application that triggered a requirement to register the croft, where such a decision is made within 6 months from the date that the registration certificate was issued. For example, where a regulatory application to enlarge a croft has been agreed within the six months challenge period, then the register will be amended accordingly. Subsection (1) states that this is only possible where no challenge has been made to the provisional registration. Subsection (2) states that the Keeper is required to amend the title sheet and make any consequential adjustments to the register to reflect the agreed change to the provisional registration. Subsection (4) requires the Keeper to issue a certificate that the registration of a croft may no longer be challenged under section 12(1). The certificate may also contain such other information as the Keeper considers appropriate. This certificate will replace the original registration certificate issued under section 8(2). Such a certificate is to be accepted as sufficient evidence of the registration of a croft and of the details held on the register, such as the boundary of the croft.

### *The title sheet*

### **Section 10: The title sheet**

25. Subsection (1) requires the Keeper to make up and maintain a title sheet of every croft registered in the Crofting Register. Subsection (2) outlines the information that must be

contained on the title sheet. This includes a map-based description of the registered croft (which will provide certainty over the full extent of the land) and the name and designation of persons with an interest in the croft i.e. any crofter, owner-occupier crofter, landlord or owner. The title sheet must also give details of any exclusion of indemnity under section 15(4) and contain any other information that the Keeper considers appropriate.

26. Subsection (3) requires the Keeper to issue a copy of the title sheet or part of the title sheet upon request. Subsection (4) requires that this is to be known as an office copy and will act as sufficient evidence of the information pertaining to an interest in a croft held on the register.

### *Challenge to first registration*

#### **Section 11: Notification of first registration**

27. Section 11 outlines the process by which persons with an interest must be notified of a first registration to the Crofting Register. Subsection (1) requires the Commission, upon receipt of a certificate of registration from the RoS under section 8(3), to notify the persons specified in subsection (3) of the matters outlined in subsection (4). Those matters are: that the croft has been registered; the description of the croft included in the title sheet; the names and designations of persons included in the title sheet; the right to challenge the registration; and the period by which such a challenge must be brought. The person who registers the croft may vary according to the regulatory trigger point. Notification under subsection (3) will ensure that any person with an interest is aware of the registration. Subsection (5) states that the period of challenge is 6 months from the Commission receiving a copy of the certificate of registration. Subsection (6) requires the applicant, upon receipt of the registration certificate, to give public notice of registration, except in the case of a new croft. They must do this by placing an advert in a local newspaper for two consecutive weeks and affixing a conspicuous notice to the registered croft in the form prescribed by the Scottish Ministers.

#### **Section 12: Challenge to first registration**

28. Section 12 sets out the circumstances in which a challenge may be brought against a croft registration. The croft is effectively provisionally registered when it is first entered on to the register and, as such, is open to challenge for a six month appeal period. If a challenge is made within 6 months, the registration becomes permanent once the appeal process has ended and the Land Court has made its determination, after which it is no longer open to appeal. If there is no challenge within 6 months, the croft registration becomes permanent and there will be no further opportunity for appeal. Subsection (1) allows a person with an interest, or any other person who is aggrieved by the croft registration, to apply to the Land Court within the 6 month challenge period for the registration to be removed or modified.

29. Subsection (2) allows the Land Court, upon considering an appeal against the registration of a croft, to make an order for the registration to be removed from the Crofting Register, modify the entry or make no order. Under subsection (3), before the Court makes a decision in respect of an appeal, the Court must allow the person who made the appeal; any persons mentioned in section 11(3); the Crofting Commission; the Keeper; and any other person the Court considers

has an interest, to make representations to the court and lead or produce evidence. The Court might also decide to hold a hearing.

30. Subsection (5) requires the Land Court to give written notice of its decision within 21 days of making its decision. Subsection (6) requires the Keeper to make any amendments to the title sheet and register which are necessary in the light of the Land Court's decision. The determination of the Land Court is subject to an appeal on a point of law to the Inner House or the Court of Session.

### *Ranking*

#### **Section 13: Ranking**

31. Section 13 provides for the ranking of registered crofts on the Crofting Register. It requires that a registration is ranked according to the date of registration. Where the date of registration for two or more crofts is the same, these registrations are to be ranked equally. The effect of ranking is that where two neighbouring crofts are registered and the boundaries do not align, the onus to challenge the boundary between the two crofts falls to the person who was second in registering the croft.

### *Rectification and indemnity*

#### **Section 14: Rectification of the register**

32. This section makes provision for the rectification of the Crofting Register. Subsection (1) allows the Keeper to rectify the register, and states that the Keeper must rectify the register upon being ordered to do so by the court. Subsection (2) requires that the Keeper must give written notice of any rectification to any person affected by the rectification and the Commission. Subsection (3) defines what is meant by "court" and "rectify".

#### **Section 15: Indemnity in respect of loss**

33. Section 15 sets out the circumstances in which the Keeper will be required to indemnify a person suffering a loss resulting from the Crofting Register. Subsection (2) sets out the matters which result in indemnifiable loss. These are: a mistake in the register made by the Keeper in making up or amending a title sheet or making consequential amendments, the correction of which would require rectification of the register; a rectification of the register under section 14(1) to correct such a mistake; the refusal of the Keeper to make such a rectification; the loss or destruction of any document lodged with the Keeper; and a mistake, in any certificate of registration or information given by the Keeper in writing or in a manner prescribed under section 16(1), which reflects a mistake made in the register by the Keeper, the correction of which would require rectification under section 14(1). Subsection (3) states that no indemnity will be payable in relation to an error by the Keeper until a decision has been taken to rectify the register and any loss suffered is reviewed in light of any rectification. Subsection (4) enables the Keeper to exclude indemnity in respect of anything appearing in, or omitted from, the title sheet. Subsection (5) enables the Scottish Ministers, by order, to prescribe circumstances where there is to be no indemnity. Subsection (6) defines "mistake".

## *Rules*

### **Section 16: Rules and fees**

34. Section 16 outlines the matters in respect of which the Scottish Ministers, after consultation with the Keeper and the Commission, may make rules. Subsection (1) states that rules may regulate the making up and keeping of the register. They may also prescribe the form of any search, report or other document to be issued or used in connection with the register and regulate the issuing of any such document. The Scottish Ministers may also make rules which regulate the procedure for registration application or the form of deeds relating to registered crofts. Finally, rules may be made in relation to such matters as the Scottish Ministers deem be necessary or proper in order to give full effect to the purposes of Part 2. Subsection (2) enables the Scottish Ministers to prescribe by order the fees payable in respect of registration and in respect of any searches, reports, certificates or other documents or copies of documents provided by the Keeper.

## *Appeals*

### **Section 17: Appeals**

35. Section 17 outlines the circumstances in which an appeal against an act or omission of the Keeper may be made. Subsection (1) allows for a person aggrieved by an act (or omission) of the Keeper to appeal any issue of fact or law arising from the act or omission to appeal to the Lands Tribunal for Scotland. Subsection (2) allows the Lands Tribunal to direct the Keeper to take remedial action which may include rectification of the register.

## *Consequential amendments of the 1993 Act*

### **Section 18: Meaning of “croft” etc.**

36. Section 18 sets out new meanings of a croft and a crofter which will be inserted after section 3 of the 1993 Act. This section adds an additional meaning of a croft to the 1993 Act. The effect of registration is therefore to provide legal certainty that the holding is a croft. Subsection (2) inserts new section 3ZA into the 1993 Act. This new section applies to any holding, situated in the crofting counties or new areas to crofting, which is registered in the Crofting Register. Section 3ZA(2) states that the holding is a croft from the date of registration; that the land which comprises the croft is determined by its description in the title sheet; and that, from the date of a registration, any person entered in the title sheet as the tenant of the croft is the crofter. Subsection (6) confirms that nothing in this section affects whether, before registration, a holding was a croft or any person was a tenant of it. Subsection (7) defines what is meant by “date of registration” and “title sheet”. The effect of registration, therefore, removes any dubiety over who has the rights and responsibilities conferred by the 1993 Act.

### **Section 19: Registration of new crofts**

37. Section 19 makes amendments of the 1993 Act. Subsection (4) inserts new section 3AA dealing with registration of new crofts. New section 3AA will apply where the Commission has made a determination under section 3A(1) or (2) of the 1993 Act to constitute land, or as the case may be, a holding as a croft. Section 3AA(2) prevents the Commission from forwarding an application to register a new croft in the Crofting Register to the Keeper until the period of

appeal outlined in section 52A(2)(b) of the 1993 Act has expired or, where such an appeal is made to the Land Court, it is abandoned or the Court upholds the Commission's decision under 3A(1) of the 1993 Act. Any challenge against the registration of a new croft differs from the appeals process against a croft registration under section 12, as there is no intention to allow for a second period of challenge. There is an opportunity to challenge an application for the establishment of a new croft under section 52A of the 1993 Act.

38. In relation to a decision to establish a new croft under section 3A(2) of the 1993 Act, where the application to create the new croft has been submitted by the tenant of a holding, the Commission must not forward an application to register the croft unless satisfied: that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for constituting the holding as a croft; that the applicant and owner have agreed that no amount in compensation is to be payable; or that any amount payable by virtue of section 3B (which sets out how the amount of compensation is to be determined in the absence of agreement) has been duly paid. The applicant will receive a certificate of registration from the RoS. Subsection (6) makes consequential amendments to section 3B of the 1993 Act.

### **PART 3 – DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS**

#### *Crofters' duties relating to residency, misuse and neglect of crofts*

#### **Section 20: Duties relating to residency, misuse and neglect of crofts**

39. This section amends the 1993 Act to clearly set out a tenant crofter's duties in relation to residing within a certain distance of the croft and putting the croft to some form of productive use. There is currently a power in section 22 of the 1993 Act for the Commission to terminate the tenancy of the crofter where they are not currently resident on, or within 16 kilometres of, the croft, where it is in the general interest of the crofting community. Section 20 replaces this with a clear set of duties on the tenant crofter in respect of residency on, and misuse and neglect of, crofts. Subsection (2) inserts a new section 5AA into the 1993 Act, clearly setting out the duty of tenant crofters to be ordinarily resident on, or within 16 kilometres of, the croft they tenant.

40. Subsection (3) replaces section 5B of the 1993 Act and places a clear duty on tenant crofters not to misuse or neglect the crofts they tenant. The current legislation allows for a landlord, or the Commission with the consent of the landlord, to apply to the Land Court for an order terminating the tenancy of a crofter in cases of misuse or neglect. Subsection (2) of new section 5B sets out the statutory definitions of "misuse" that the Commission must use to determine whether misuse takes place. These are that the tenant crofter wilfully and knowingly uses the croft other than to cultivate it or put it to an approved purposeful use; fails to cultivate it; or fails to put it to any such purposeful use. Subsection (3) sets out the statutory definition of "neglect" that the Commission must use to determine whether neglect is taking place and details the relevant regulations. This is that the tenant crofter is not keeping the croft in good agricultural and environmental condition.

41. Subsection (4) of new section 5B does, however, permit tenant crofters to act in a way that would otherwise constitute misuse or neglect without that being treated as a breach of the duty, provided such actions are taken to conserve the natural beauty, or the flora and fauna, of

the locality. Subsection (5) of new section 5B also allows tenant crofters to continue using the croft for a subsidiary or auxiliary occupation, if that use was permitted immediately prior to 28 January 2008 (the date section 7 of the Crofting Reform etc. Act 2007 came into force), without that being treated as misuse or neglect.

42. Subsection (6) of new section 5B defines what is “purposeful use” for the purposes of subsection (2)(a) of new section 5B. Subsection (7) provides the Scottish Ministers with power to amend, by order, the meaning of neglect.

#### *Duties of owner-occupier crofters*

### **Section 21: Duties of certain owner-occupiers of crofts**

43. Section 21 inserts new sections 19B to 19D into the 1993 Act covering owner-occupier crofters. Subsection 19B(1) defines an “owner-occupier crofter” as being the owner of the croft, where the person was the tenant who exercised the right to buy the croft (or is that person’s successor in title), and where the person occupies the croft or has let it to another person on a short lease under new section 29A. Section 19B(2) defines “owner-occupied croft” and “owner-occupier’s croft”. These definitions do not exist in current legislation which effectively considers owner-occupiers to be “landlords of vacant crofts” who could be required by the Crofters Commission, at any time, to submit letting proposals. In practice, however, the Commission tended not to require this if the croft was being occupied and put to purposeful use. As a result of amendments of section 23 of the 1993 Act contained in schedule 2 to this Bill, owner-occupier crofters will no longer be subject to that regime. Instead, sections 26A to 26K will apply.

44. New section 19C sets out the same duties for owner-occupier crofters as those placed on tenant crofters. Subsection (2) of new section 19C requires owner-occupiers to be ordinarily resident on, or within 16 kilometres of, the croft; to not misuse or neglect the croft; to cultivate the croft or otherwise put it to purposeful use; and to keep the croft in a fit state for cultivation.

45. Subsection (3) and subsection (4) of new section 19C respectively set out the statutory definitions of “misuse” and “neglect” for owner-occupied crofts, in the same terms as apply to tenanted crofts. Subsection (5) of new section 19C also provides that owner-occupier crofters may act in a way that would otherwise constitute misuse or neglect, if such actions are taken to conserve the natural beauty, or the flora and fauna, of the locality.

46. Subsection (6) of new section 19C also provides that owner-occupier crofters may continue using the croft for a subsidiary or auxiliary occupation, if permitted immediately prior to the date on which section 21 of this Bill comes into force, without that being treated as misuse or neglect. Subsection (7) defines what is “purposeful use” for the purposes of subsection (2)(c)(ii) of new section 19C. Subsection (8) provides the Scottish Ministers with power to amend, by order, the meaning of neglect.

47. Section 21 also introduces new section 19D which prevents an owner-occupier from selling any part of an owner-occupied croft without first dividing the croft with the consent of the Commission. This matches the position for tenant crofters who must obtain the consent of the Commission before they may divide their crofts.

48. Subsection (3) of new section 19D provides that any division approved by the Commission takes effect once the details have been recorded in the Crofting Register.

49. Subsection (4) declares that any sale of part of an owner-occupied croft which is not a new croft created through division approved by the Commission is null and void; and subsection (5) allows the Commission to declare the original croft vacant. Subsection (7) provides definitions of “division”, “original croft” and “new croft” for the purposes of this section.

#### *Commission consent for absence from croft*

### **Section 22: Consent for absence from croft**

50. This section inserts new sections 21B, 21C and 21D into the 1993 Act. These introduce a new concession for both owner-occupier and tenant crofters to be absent from their crofts with the permission of the Commission. This is done on the understanding that there may be valid reasons for absence. Under the 1993 Act, absent owner-occupier crofters could be required to submit letting proposals and absent tenants could have their tenancies terminated for failing to reside on, or near, their croft.

51. Section 21B permits the Commission to consent to tenant crofters and owner-occupier crofters being ordinarily resident further than 16 kilometres from the croft. This consent can be granted where the Commission has received an application under subsection (1) (which, in the case of an application by a tenant crofter, has also been copied to the landlord of the croft under subsection (2)). Subsection (3) of new section 21B states that the Commission may grant consent only if they consider there is a good reason for a tenant or owner-occupier crofter to be ordinarily resident further than 16 kilometres from the croft. Subsection (4) empowers the Commission to attach conditions, including a time limit, to any consent that it grants in this context.

52. Subsection (5) of new section 21B requires the Commission to make a decision on any application to be absent within 28 days of the date of application. The appeal provisions in section 52A of the 1993 Act apply to the Commission’s decision under subsection (5). Subsection (6) requires the Commission to inform the applicant and, where the applicant is a tenant crofter, the landlord of their decision and the reasons for making it.

53. New section 21C permits an applicant to whom the Commission has granted time-limited consent to be absent from the croft to apply to extend the duration of such an absence.

54. New section 21D permits an applicant to whom the Commission has granted conditional consent, other than time-limited consent, to make an application to have the condition varied.

#### *Enforcement of duties of crofters and owner-occupier crofters*

### **Section 23: Enforcement of duties of crofters and certain owner-occupiers**

55. This section inserts 10 new sections into the 1993 Act (sections 26A to 26K) setting out the arrangements for the enforcement of duties placed on tenant crofters and owner-occupier crofters.

56. New section 26A sets out to whom, and in what circumstances, new section 26B applies in commencing the enforcement provisions where the Commission considers that tenant crofters and owner-occupier crofters are not fulfilling their duties to reside on, or within 16 km of, the croft and not misuse or neglect the croft (or, in the case of an owner-occupier crofter, any other duty inserted by section 21 of the Bill). Subsection (2) defines “residency duty”, “other duties” and “relevant person” for the purposes of these sections.

57. New section 26B requires the Commission to give written notice to those it considers are not fulfilling the duties inserted by sections 20 and 21 of the Bill, unless it considers there is good reason not to. Subsection (2) requires the written notice to explain why the Commission considers duties are not being complied with and to give notification that a person subject to the notice may make representations to the Commission within a “representation period” of 28 days of issue of the written notice. Section 26B(3) requires the Commission to consider all representations made within the representation period, although they may also consider representations made later (subsection (4)). Subsection (5) requires the Commission to decide whether or not the duties are being complied with no later than 14 days after the “representation period” ends.

58. New section 26C sets out the steps that the Commission must take if they decide, under section 26B(5), that a duty is not being complied with, prior to proceeding with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission must give written notice to the person in breach providing an opportunity for them to make an undertaking to remedy the breach and comply with the duty that has been breached. New section 26C(2) details the information a written notice must contain. Subsection (3) permits the Commission to place conditions upon an undertaking given and subsection (4) requires the Commission to decide whether or not to accept an undertaking within 28 days of it being offered.

59. New section 26D sets out the types of undertaking that a tenant crofter or owner-occupier crofter may give under subsection 26C(2). Subsection (2) describes the residency undertaking, which is an undertaking to comply with the residency duty within such period as the Commission considers reasonable. Subsection (3) describes the misuse or neglect undertaking, which is an undertaking to comply with the duty not to misuse or neglect the croft within such period as the Commission considers reasonable. Subsection (4) describes the general undertaking, which is a commitment to comply with any of the other duties within such period as the Commission considers reasonable.

60. New section 26E sets out the circumstances in which the Commission may not proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission may not proceed or take further enforcement action if the period for giving or complying with an undertaking has not expired or if an undertaking has been complied with. The Commission may also not take further enforcement action where it has consented to, or a tenant crofter has applied for consent (where that has not been decided upon) to, sublet the croft or, in the case of an owner-occupier crofter, the Commission has consented to, or the owner-occupier has applied for consent (where that has not been decided upon) to, let the croft on a “short lease” (within the meaning of new section 29A). Nor may the Commission take further enforcement action in respect of a failure to comply with the residency duty where they have either consented to the absence or are still in the process of considering an application for consent for absence, extending a period of absence or varying an absence condition.

61. New section 26F places a duty on the Commission to proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission must take action, unless they consider there is a good reason not to, if they decide under section 26B(5) that a tenant crofter or owner-occupier crofter is not complying with any duty under this part of the Bill and none of the circumstances mentioned in new section 26E apply. Subsection (2) requires the Commission to proceed with tenancy termination in respect of tenant crofters, and letting procedures in respect of owner-occupier crofters.

62. New section 26G provides power to enable the Commission to divide a croft before they proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission may take such action where it considers it fair to divide the croft, but only after having given due consideration to the factors stipulated by subsection (2)(a) of section 26G. Subsection (2) states that the Commission must consider the use and occupation of the croft, the interests of the estate on which the (tenanted) croft is located, the sustainable development of the crofting community, and such other matters as the Commission deems appropriate. Subsection (3) provides for a division of a croft, or an owner-occupied croft, under this section to take effect when the details are entered on the Crofting Register. Subsection (4) provides that, where a croft has been divided for failure to comply with the duties placed on the tenant crofter or owner-occupier crofter, the Commission may proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J in respect of either the whole of the original croft or any part of the croft. Subsection (5) defines “division” and “new crofts” for the purposes of this section.

63. New section 26H sets out the procedures that the Commission must follow when terminating a croft tenancy. The Commission must, unless they consider there is a good reason not to, make an order terminating the tenancy of a tenant crofter if they are satisfied that it is in the general interest of the local crofting community. Subsections (2) to (4) require the order to be notified to both tenant crofter and landlord and to specify the date on which it takes effect (which must not be earlier than 28 days after the later notification of the action (whether that is to the tenant crofter or the landlord)). Subsections (5) and (6) provide for the ejection of the crofter if he or she fails to give up occupation of the croft. The sheriff may refuse to issue a warrant for eviction only where the crofter can show cause. Subsection (7) permits the Commission to recover the expenses of applying for a warrant for eviction, and executing that warrant, from the crofter. Subsection (8) gives a crofter whose tenancy has been terminated for failure to comply with duties under the Act the same rights (i.e. compensation for permanent improvements made to the croft) and liabilities (i.e. rent due) as if the crofter had voluntarily renounced their tenancy on the date on which the order terminating the tenancy takes effect. This provides all crofters with the same rights and liabilities irrespective of how tenancies are ended.

64. New section 26J sets out the procedures that the Commission must follow when requiring an owner-occupier crofter to submit letting proposals. Subsection (1) requires the Commission, unless they consider there is a good reason not to, to direct the owner-occupier crofter who has failed to comply with a duty under section 19C to submit a proposal, within 28 days of the Commission’s direction, for letting the croft. Subsection (2) requires the Commission to take action where the owner-occupier crofter has not submitted a letting proposal within that period or has not had a letting proposal approved within 8 weeks of the direction having been given. Subsections (3) and (4) require the Commission to invite applications, by public notification, for

letting and to set a time period within which applications may be received. When the time period set in the public notification has ended, the Commission must decide to whom the croft should be let and, in consultation with the owner-occupier crofter, the conditions under which the croft is to be let. Where no applications are received, the Commission may choose not to let the croft, thereby rendering it a vacant croft. Subsection (5) allows the owner-occupier crofter to apply to the Scottish Land Court within 28 days of the letting date to vary the conditions set by the Commission. Any variation determined by the Scottish Land Court will take effect from the letting date (subsection (6)). This is similar to the existing procedures for requiring letting proposals under the vacant croft provisions in section 23 of the 1993 Act. A person to whom the owner-occupied croft is let under section 26J will, by virtue of section 3(3) of the 1993 Act, be a crofter.

65. New section 26K sets out the rights of appeal to the Scottish Land Court on section 26 issues. Subsections (1) and (2) set out the issues which may be appealed. These are: a decision of the Commission not to accept an undertaking or to impose conditions on an undertaking (section 26C); the making of an order by the Commission terminating a croft tenancy (section 26H); and a direction from the Commission for an owner-occupier to present letting proposals (section 26J). There is no specific right of appeal against the Commission's decision that a duty is not being complied with as any right of appeal will follow from the action taken to address this determination. Subsection (3) provides that an appeal may be made by stated case to the Land Court (i.e. that Court will consider the facts and arguments as stated by both parties in relation to the grounds for appeal as set out in the Act) within 21 days of the decision, order or direction appealed against and subsection (4) defines the grounds on which an appeal may be made. Subsection (5) sets out the actions the Land Court may take in respect of an appeal and subsection (6) requires the Commission to give effect to the decision of the Land Court on an appeal under this section.

#### *Letting of owner-occupied crofts*

### **Section 24: Letting of owner-occupied crofts**

66. This section inserts 2 new sections into the 1993 Act (sections 29A and 29B) setting out the arrangements for the letting of owner-occupied crofts.

67. Section 29A requires the owner-occupier crofter to obtain the written consent of the Commission prior to any letting of an owner-occupied croft. That might be a letting to a tenant as a crofter or it might be a letting to a tenant who, because of section 29B, does not have that status. Subsection (2) permits the Commission to impose conditions, other than in respect of rent, in giving their consent to a letting proposal where the letting is for a period of 10 years or less (a "short lease"). Subsection (3) makes void any lease granted without the Commission's consent, or, where the lease is a short lease, any lease not granted in accordance with any conditions imposed by the Commission under subsection (2). Subsection (4) empowers the Commission to terminate a short lease if a condition it has attached to their consent has been breached or if the tenant fails to comply with a condition of let, other than in respect of rent. Subsection (5) clarifies that the conditions imposed under this section will not apply to the letting of the croft house, or other buildings on the croft, to holiday visitors.

68. Section 29B clarifies the status of a tenant under a short lease. Such tenants will be treated as neither a crofter nor a tenant under a tenancy under the Agricultural Holdings (Scotland) Act 2003. Consequently, they will not have the same legal rights as those types of tenants. By virtue of section 3(3) of the 1993 Act, a tenant of an owner-occupier's croft on a lease other than a short lease or a holiday let will be a tenant crofter. As a result, the owner-occupier crofter becomes a landlord of a croft and the provisions relating to owner-occupier crofters will cease to apply.

#### **PART 4 – FURTHER AMENDMENTS OF THE 1993 ACT**

##### *Disposal of croft land, resumption and decrofting*

#### **Section 25: Extension of period during which sum is payable on disposal of croft land**

69. Section 25 amends subsection (3) of section 14 of the 1993 Act to extend the period during which a crofter who has acquired croft land under section 13(1), or a member of that crofter's family who has since obtained title to that land, must pay the landlord one half of the profit made following disposal of the land. The period is extended from 5 years to 10 years.

#### **Section 26: Consideration of application to resume croft**

70. Section 26 amends the 1993 Act by inserting new sections (1AA) to (1AD) into section 20 of the Act. Section 20 deals with resumption of croft land and the amendments will allow the Land Court to consider additional factors when determining applications to resume.

71. New subsection (1AA) details the additional matters which the Land Court may take into account in determining an application to resume croft land and, in particular, in relation to satisfying itself, under section 20(1) of the 1993 Act, that the proposed reasonable purpose for resumption relates to the public interest. Subsection (1AA)(a) allows the Court to take into account the effect the proposed purpose for resumption will have on the issues detailed in new section (1AC). These issues include the sustainability of crofting in the locality of the croft and the sustainability of the crofting community in that area, as well as the sustainability of the landscape and environment in that area. It also allows the Court to consider the effect the proposal to resume would have on the social and cultural benefits associated with crofting. Subsection (1AA)(b) allows the Court to consider the effects of the purpose of the application and reach its own conclusion on whether the proposal and decrofting the land are in the public interest, notwithstanding the existence of planning permission. Subsection (1AD) defines terms used in new section (1AA). Subsection (1AB) provides that new subsection (1AA) does not affect the requirement for the Land Court to extend the period of resumption in line with an extension of a relevant planning consent.

#### **Section 27: Consideration of decrofting directions**

72. Section 27 of the Bill amends the 1993 Act by inserting new sections (1A) to (1C) into section 25 of that Act. Section 25 of the 1993 Act deals with decrofting and the amendments will allow the Commission to consider additional factors when determining applications to decroft.

73. This will allow the Commission to take into consideration the same factors when determining applications to decroft land as the Land Court may consider when considering applications to resume croft land following the amendments made by section 26 of the Bill.

74. New subsection (1A) details the additional matters which the Commission may take into account in determining a decrofting application and, in particular, in relation to satisfying itself, under section 25(1)(a) of the 1993 Act, that the proposed reasonable purpose for decrofting relates to the public interest. Subsection (1A)(a) allows the Commission to take into account the effect the proposed purpose for decrofting will have on the issues detailed in new section (1B). These issues include the sustainability of crofting in the locality of the croft and the sustainability of the crofting community in that area, as well as the sustainability of the landscape and environment in that area. It also allows the Commission to consider the effect the proposal to decroft would have on the social and cultural benefits associated with crofting. Subsection (1A)(b) allows the Commission to consider the effects of the purpose of the application and reach its own conclusion on whether the proposal and decrofting the land are in the public interest, notwithstanding the existence of planning permission. Subsection (1C) defines terms used in new subsection (1A).

#### *Letting of vacant crofts*

### **Section 28: Requirements to submit proposals for re-letting crofts**

75. Section 28(2) amends section 11 of the 1993 Act, which covers transfers of crofts on intestacy. Subsection (2) requires that, where the Commission declare the croft vacant under section 11, a notice to the landlord under that section will require the landlord to submit proposals for re-letting the croft before the expiry of four months beginning on the day on which notice is given.

76. Section 28 also amends section 23 of the 1993 Act, which covers vacant crofts and the re-letting of crofts declared vacant under section 11. Subsection (4) amends section 23(5) so that, where the croft is vacant, the landlord is required to submit letting proposals to the Commission within two months from notice being given under section 23(5). Subsection (5) inserts new subsection (5ZA) into section 23. This new subsection replaces and clarifies some of what was formerly provided in section 23(5), namely that, if no proposals are submitted within 2 months, the Commission must proceed to invite applications from prospective tenants under subsections (5B) and let the croft under subsection (5C). It also provides that, if proposals are submitted within 2 months, the Commission have a further month within which to approve or reject those proposals before they must proceed under subsections (5B) and (5C). If they approve a proposal, they need not so proceed.

77. Subsection (6) substitutes a new subsection (5A) for the existing subsection (5A) of section 23 of the 1993 Act. New subsection (5A) relates to the case where a croft is, under section 11(8) of the 1993 Act, declared vacant following the death of a crofter (section 11 deals with intestacy). It makes equivalent provision to that made by new subsection (5ZA) in relation to vacant crofts, except that in this case the period within which the landlord must submit re-letting proposals is 4 months.

## **Section 29: Application to decroft where action being taken to re-let vacant croft**

78. Section 29 inserts a new subsection (3A) into section 24 of the 1993 Act (which deals with decrofting in the case of resumption or vacancy). New subsection (3A) will allow the Commission not to consider a decrofting application made by the landlord under section 24(3) if the Commission have given notice under section 11(8)(a) or 23(5) requiring re-letting proposals to be submitted and the period within which the proposals must be submitted has not expired. It also allows them not to consider such an application where, because no proposals have been submitted before the period has expired or, where proposals have been submitted, because none have been approved, the Commission are proceeding under section 23(5B) and (5C). So these provisions limit consideration by the Commission of decrofting applications in specific circumstances.

### *Enlargement of crofts*

## **Section 30: Enlargement of crofts**

79. Section 30 substitutes a new section 4 for that currently in the 1993 Act. Presently, the 1993 Act allows for the enlargement of a croft upon agreement between the crofter and the landlord and it is only where this enlargement would result in the croft area exceeding 30 hectares that a joint application from the landlord and the crofter must be submitted to the Commission for approval. As the intention is for the Crofting Register to capture any significant change in the extent of, or interests in, a croft, the new section 4 requires the Commission to approve any enlargement of a croft (regardless of the resulting size of the croft) and this in turn will require a first registration or amendment to the Crofting Register. Subsection (3) of new section 4 allows the Commission to make a direction for the enlargement of a croft provided that the resulting enlargement would be of benefit to the croft or the crofter and would not result in the area substantially exceeding 30 hectares.

### *Commission's approval and consent*

## **Section 31: Obtaining Commission approval or consent**

80. Section 31 amends section 58A of the 1993 Act, which sets out the procedure to be followed in obtaining the consent or approval of the Commission. The main change is to make the current process simpler by requiring the Commission simply to approve applications for consent, reject them, or approve them subject to conditions (see section 31(4)). Subsection (2) extends subsection (4) of section 58A of the 1993 Act to allow any person the Commission considers to have a relevant interest in the application to object to that application. Subsection (3) amends section 58A to allow the Commission to consider objections submitted after the 28 day period specified in section 58A(4) if they are satisfied that there is good reason why the objection was late.

81. Subsection (4) of section 31 amends section 58A(6) to set out more clearly the options open to the Commission in determining an application to which section 58A applies. Subsection (5) replaces sections 58A(7) to (10) with new subsection (7), which sets out the factors to which the Commission are to have regard when considering applications. Subsections (6) and (7) make consequential changes to section 58A.

82. Subsection (8) inserts a new subsection (12A) into section 58A of the 1993 Act and details those persons who are to be notified by the Commission of a decision on an application. Subsection (10) inserts a new section 58B into the 1993 Act, which sets out the procedure for varying the conditions of approval or consent under section 58A as amended. Subsection (2) of new section 58B sets out the Commission's options for modification of a condition following application by the person who applied for the approval or consent and subsection (3) details those to be notified of the decision within 14 days of modification. Subsection (4) of new section 5B applies certain aspects of the section 58A procedures (e.g. the form in which an application must be made) to applications for modification of conditions under subsection (2) of section 58B.

## **PART 5 – GENERAL AND MISCELLANEOUS**

### **Section 32: Pre-consolidation modifications of enactments relating to crofting**

83. This section of the Bill allows the Scottish Ministers to make an order modifying enactments relating to crofting, which they consider to facilitate, or are desirable for, consolidation of the law on crofting. Subsection (2) forbids the Scottish Ministers from making such an order unless a consolidation Bill has been introduced to the Scottish Parliament. Subsection (3) will result in the order modifying enactments coming into force immediately before the commencement of a consolidation Act resulting from such a Bill.

### **Section 33: Subordinate legislation**

84. This section of the Bill sets out the procedures by which the Scottish Ministers will be able to exercise powers that the Bill gives them to make subordinate legislation. All regulations, rules and orders will be made by statutory instrument.

### **Section 34: Ancillary provision**

85. This section of the Bill enables the Scottish Ministers to make incidental, supplementary and consequential provision by order if they consider it to be appropriate for the purposes of the Bill or to be in consequence of, or for giving full effect to, any provision of the Bill. Subsection (2) allows for such an order to modify any enactment, including the Bill itself.

### **Section 35: Minor and consequential amendments and repeals**

86. This section gives effect to schedule 2 of the Bill. Schedule 2 contains minor and consequential amendments and repeals of other legislation.

### **Section 36: Interpretation**

87. This section defines a number of expressions as they are used in the Bill.

### **Section 37: Short title, commencement and Crown application**

88. This section provides for the Bill to come into effect on a day or days appointed by order by the Scottish Ministers.

## **SCHEDULE 1 – THE CROFTING COMMISSION**

89. Schedule 1 is introduced by section 1(3) of the Bill and replaces the existing schedule 1 to the 1993 Act.

90. Paragraph 1 of new schedule 1 to the 1993 Act establishes the status of the Crofting Commission. The Commission will be a corporate body. Sub-paragraph (3) states that the Commission's members and employees are not to be regarded as civil servants; however, paragraph 10(2) enables the Scottish Ministers to continue to supply staff to the Commission and such staff continue to be civil servants.

91. Paragraph 2 outlines the general powers of the Commission. Sub-paragraph (1) enables the Commission to do anything it considers necessary or expedient to enable it to effectively carry out its functions. Sub-paragraph (2)(d) gives the Commission the power to charge in respect of its functions and the Scottish Ministers the power to determine the appropriate level of fees.

92. Paragraph 3 outlines the proposed membership of the Commission. Sub-paragraph (1) indicates that there are to be a maximum of nine members, of whom no fewer than two should be persons appointed by the Scottish Ministers and no more than six should be elected members. There will therefore be two types of members: "elected members" and "appointed members". The Scottish Ministers are also to select one of the members (appointed or elected) of the Commission to be the convener. The majority of the Commission are to be elected members unless such a majority cannot be maintained. This could occur if an elected member resigns or is removed from office and there are no other candidates available from the Commission elections (who originally polled too few votes to become a member of the Commission) to fill this role. Sub-paragraph (4) allows the Scottish Ministers to vary the number of members, elected members and appointed members by order but any order must ensure the elected members are always in the majority.

93. Paragraph 4 sets out the eligibility requirements for appointed members of the Commission. Each appointed member would need to have a knowledge of crofting and have no financial interest which could prejudice their role as a member. In addition, if none of the elected members speaks the Gaelic language, then at least one appointed members must speak the Gaelic language. Sub-paragraph (3) lists different types of interests which would not be considered interests that might prejudice the ability of an appointed member to carry out their functions.

94. Paragraph 5 enables the Scottish Ministers to determine the terms and conditions of appointment of an appointed member.

95. Paragraph 6 allows for members of the Commission to resign from office at any time provided they do so in writing to the Scottish Ministers. Sub-paragraph (2) allows a person who is no longer a member of the Commission to be re-appointed at a later date provided they were not removed from office by the Scottish Ministers. Sub-paragraph (3) allows the Scottish Ministers to appoint a replacement member of the Commission where an elected member resigns or otherwise ceases to be a member of the Commission (other than being removed from the

Commission) and is not replaced by another candidate from the elections as outlined in sub-paragraph (4).

96. Paragraph 7 enables the Scottish Ministers to make regulations governing the elections of members of the Commission. Under sub-paragraph (2), such regulations may include provision for the voting system to be used during these elections and their frequency and timings. They will make provision for the conduct of elections and the constituencies in which an election would be held. They will determine who will be eligible to vote during elections. Regulations will also provide for the appointment of a returning officer to oversee the running of the elections and will determine that officer's functions; fees and expenses; and tenure and vacation of office. The regulations will determine who may and may not stand for elections, including by reference to a person's age. The number of members returned from each constituency will be decided. Finally, where there is a vacancy on the Commission, the regulations will outline the circumstances in which a person, who has polled fewer votes during an election than the person vacating membership of the Commission, might fill the vacancy.

97. Paragraph 8 requires the Scottish Ministers to determine the rate of remuneration and allowances for members and to pay such remuneration and allowances. It also allows the Scottish Ministers to make arrangements for the payment of pensions, allowances and gratuities to current and former members of the Commission.

98. Paragraph 9 sets out the circumstances in which the Scottish Ministers may remove a member from office. This requires Ministers to give notice to the member in writing if they are satisfied that the member: is insolvent; has been convicted of a criminal offence which results in imprisonment for 3 months or more; is incapacitated by physical illness or mental disorder; has been absent from meetings of the Commission for 6 months or more without the convener's permission; or is otherwise deemed unable or unfit to exercise their functions as a member. Sub-paragraph (2) sets out the circumstances in which a member will be considered insolvent. Where there is a vacancy in the Commission as a result of an elected member being removed from office, the regulations will outline the circumstances in which a person, who has polled fewer votes during an election than the person vacating membership of the Commission, might fill the vacancy.

99. Paragraph 10 sets out the arrangements for the appointment of the chief executive and staff of the Commission. Sub-paragraph (1) requires the Scottish Ministers to consult with the convener of the Commission before appointing a chief executive. As is currently the case under the 1993 Act, under sub-paragraph (2) the Scottish Ministers will continue to be able to provide staff to the Commission and such staff will remain civil servants. Sub-paragraph (3) also provides the Commission with the ability to appoint its own employees, which will provide it with flexibility in the long term to meet staffing requirements. Sub-paragraphs (4) to (6) provide the Scottish Ministers with the ability to make directions to the Commission (which must be complied with) in relation to the number of employees who may be appointed and their terms and conditions of employment. Sub-paragraph (7) provides the Commission with the power to pay, or make arrangements for the payment of, such pensions, allowances and gratuities as the Commission determines. This is subject to the approval of the Scottish Ministers.

100. Paragraph 11 provides for the quorum of the Commission to be five and, provided there are three or more elected members, it must include no fewer than three elected members, ensuring that crofters are always in the majority when a decision is being taken by the Commission. There will always be at least three elected members unless more than three members have been replaced due to resignation or through removal from office.

101. Paragraph 12 sets out requirements for the Commission to establish committees, including an audit committee and such other committees as they consider appropriate. Sub-paragraph (3) allows the Commission to appoint members to their committees but does not require these persons to be members of the Commission. Sub-paragraph (4) qualifies this by preventing any committee from consisting solely of non-members of the Commission.

102. Paragraph 13 sets out the procedure of the Commission and its committees. Sub-paragraph (1) allows for the Commission to determine its own procedure and the procedure of its committees. Sub-paragraphs (2) and (3) require the convener of the Commission to chair meetings or to appoint another member to act as chair where they are unavailable. Sub-paragraph (6) enables the Commission, or committees of the Commission, to continue with their proceedings even where a vacancy arises on the Commission or committee or where there has been a defect in the appointment of a member.

103. Paragraph 14 deals with member interests, with sub-paragraph (1) requiring a member of the Commission or a person with a direct or indirect interest in any matter being considered at a meeting of the Commission to disclose their interests. Sub-paragraph (3) prevents a person who has declared an interest from taking part in any deliberation or decision on a matter in which they have an interest.

104. Paragraph 15 will allow the Commission to delegate its functions. Sub-paragraph (1) provides for the Commission to delegate its functions to: any of its members; any of its committees; their chief executive; any person whose services are provided to them by the Scottish Ministers; and any of their employees. The Commission will have the ability to determine the type of functions it can delegate and the extent to which these functions can be carried out on its behalf. Sub-paragraph (2) specifies that the Commission continue to have responsibility for the exercise of their functions even after a function has been delegated.

105. Paragraph 16 enables the Commission to appoint a panel of local assessors to assist them in the local execution of their functions. This continues the present arrangements for the appointment of assessors under the 1993 Act. Assessors are required to be resident in the crofting counties or in the new areas to crofting, and sub-paragraph (3) enables the Commission to pay them for any expenses or loss of earnings resulting from their role.

106. Paragraph 17 requires the Commission to have its main office in the crofting counties. The Commission's determination of the location of its premises must be approved by the Scottish Ministers.

107. Paragraph 18 sets out proposed financial arrangements for the Commission. Sub-paragraph (1) enables the Scottish Ministers to pay grants or make loans to the Commission. This allows the Scottish Ministers to provide the Commission with grant-in-aid. Sub-paragraph

(2) enables the Scottish Ministers to determine the terms and conditions of such loans and grants and sub-paragraph (3) allows Ministers to vary these terms and conditions.

108. Paragraph 19 requires the Commission to prepare accounts. Sub-paragraph (1) requires the Commission to keep a proper set of accounting records and prepare a statement of accounts each year. This statement of accounts must be sent to the Scottish Ministers on a specified date as directed. Sub-paragraph (5) requires the Commission to make audited accounts available for public inspection.

109. Paragraph 20 requires the Commission to provide the Scottish Ministers with information on the exercise or proposed exercise of their functions as required.

110. Paragraph 21 enables the Scottish Ministers to transfer property, rights and liabilities to the Commission where it is considered expedient to do so.

## **SCHEDULE 2 – MINOR AND CONSEQUENTIAL MODIFICATIONS**

111. Schedule 2 sets minor and consequential amendments to the Small Landholders (Scotland) Act 1911; the Succession (Scotland) Act 1964; the Crofters (Scotland) Act 1993; and the Ethical Standards in Public Life etc. (Scotland) Act 2000.

112. Schedule 2 makes particular provision in relation to the transfer of responsibility for small landholdings. It extends the Commission's regulatory powers for small landholdings in the crofting counties to include any areas designated by order as new crofting areas. Also, small landholdings in Scotland have previously been regulated by the Scottish Ministers as the successor to the Board of Agriculture, with the most frequent regulatory action being in relation to vacant holdings, and similar to decrofting procedures. Schedule 2 to the Bill amends the Small Landholders (Scotland) Act 1911 to extend the powers of the Commission in the crofting counties to include any areas designated by order, to regulate vacant holdings; regulate construction of additional dwellings; regulate merger and amalgamation of holdings; and suggest model forms of agreements.

113. Where two or more landhold units have been amalgamated, or a landhold unit joined with a larger unit the resultant holding is deemed to be a larger agricultural unit, currently this would render them ineligible for conversion to crofts, however the Bill makes provision for the acceptance of applications even if a landhold holding is comprised within a larger agricultural unit.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

114. This document relates to the Crofting Reform (Scotland) Bill introduced in the Scottish Parliament on 9 December 2009. It has been prepared by the Scottish Government in order to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

115. This document sets out the financial implications of the Crofting Reform (Scotland) Bill. It should be read in conjunction with the Policy Memorandum and the Bill itself.

### **PART 1 – REORGANISATION OF THE CROFTERS COMMISSION**

#### **Costs to the Scottish Government**

116. In 2008-09, the Government spent £3.8m defraying the costs of the Crofters Commission. The future budget for the Commission will fall as responsibility for administering crofting grants has been transferred to the Government's Rural Payment and Inspections Directorate and crofting community development to Highlands and Islands Enterprise. However, there will be no savings to the Government as it will continue to meet the costs of these transferred responsibilities.. There will be a slight increase in the Government's costs in association with Part 1 of the Bill, associated with the changes to the membership arrangements for the Commission. Part 1 of the Bill proposes that the Commission should, in future, receive grant-in-aid and be responsible for managing their own budget.

117. In order to increase the representativeness and accountability of the Commission it is proposed that the majority of members on the Commission should be crofters elected by crofters. The Commission will consist of up to nine members, six of whom it is intended would be registered crofters, with the remainder being Ministerial appointees. These arrangements will replace the existing arrangements, under which all members are appointed.

118. In order to elect members to the Commission, it is proposed that elections would take place every 5 years. It is anticipated that, if Royal Assent were to be received in summer 2010, preparation for elections of members of the Commission would begin shortly after in order to establish an electoral roll. This would enable elections to take place any time after the roll has been established. There are around 18,000 crofts that are occupied by an estimated 10 to 12,000 crofting households<sup>1</sup>. It is proposed that the crofting areas would be broken down into six constituencies, with one member representing each constituency. The elections would be conducted through a postal vote and would be overseen by the returning officer for the local authority. There would be a one-off cost associated with the establishment of an electoral roll which it is estimated would cost approximately £25,000, which would be incurred in financial year 2010-11. It is proposed that this roll would be formed by updating the names and addresses of crofters in the present Register of Crofts as held by the Crofters Commission. This exercise would require a letter to be sent to every registered crofter to check the accuracy of their details

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<sup>1</sup> <http://www.crofterscommission.org.uk/What-is-Crofting.asp>

on the current register. The cost of this exercise would relate to staff time and associated administrative costs.

119. The Crofters Commission currently spends £148,000 per annum on the pensions, salaries and associated costs of its six Commissioners and Convener. It is proposed that there would be up to nine members of the Commission which would add approximately £37,000 per annum of additional expenditure to the Commission's costs bringing the total cost of the Commission's membership to £185,000 per annum. These projected figures include travel and subsistence claims which will vary.

120. The table below outlines the current costs to the Crofters Commission for the administration of regulatory applications.

<b>Type of regulatory application</b>	<b>Average no. of person days per application</b>	<b>Average cost per application (£s)</b>
Assignment and family assignment	1.6	844
Succession, transfer by executor, bequests	1.0	530
Decrofting house sites and feus	1.3	777
Decrofting part and whole	2.7	1,504
Subletting	2.9	1,532
Subdivision and division	3.2	1,615
Reletting and letting	2.7	1,424
Apportionments	6.6	3,485
Crofter forestry	1.0	500

*Table 1: Costs of processing regulatory applications – based upon 2007-08 figures*

121. In addition to providing the Commission with grant-in-aid, the Bill provides the Commission with the power to fix and recover charges for the service of processing regulatory applications. Currently, the entire costs for the administration of regulatory applications are met by the taxpayer. No decision has yet been taken as to the type of regulatory applications the Commission might charge for, nor has a decision been taken as to what proportion of costs the applicant might be expected to meet.

122. The consultation paper asked what the proportion of costs for processing regulatory applications should be between the individual applicant and the tax payer. Of those who answered the question, 51% of respondents supported the proposition that there should be a balance of costs between the individual applicant and the taxpayer. A small number of respondents suggested that applicants should only pay towards the cost of processing regulatory applications whereby they would be the main beneficiary; namely decrofting and apportionment applications. Any fee charged for regulatory activities would be used to cover costs incurred by the Crofters Commission from processing regulatory applications.

### **Costs to local authorities**

123. There would be a cost to the local authority associated with elections as local returning officers would be responsible for overseeing the electoral process. It is considered that there

would be efficiencies given the experience of local returning officers in dealing with elections. It is estimated that the total cost of each election would be in the region of £100,000 every five years based on estimates provided by Highland Council. The table below provides a breakdown of anticipated costs. The Government would reimburse local authorities for the costs incurred holding elections to the reformed Crofters Commission.

<b>Associated cost</b>		<b>Totals</b>
Fixed costs		£23,900
Postage (13,000 x 30p per item)	£3,900	
Printing envelopes and leaflets	£10,000	
Press advertising	£10,000	
Issue of ballot papers		£19,200
Postage	£4,200	
Printing	£15,000	
Return of ballot papers (assuming 90% turnout) Postage costs only		£4,200
Count (electronic) Based on Cairngorms National Park Authority election 2007		£20,000 if single count <b>OR</b>
Count (manual – single site)		£3,000
40 staff @ £6.00 ph for 8 hours	£2,000	
contingency	£1,000	
Other (including expenses and contingency)		£30,000
<b>Total (electronic count)</b>		<b>£97,300</b>
<b>Total (manual count)</b>		<b>£80,300</b>

*Table 2: Costs associated with administering Commission elections*

### **Costs to other bodies, individuals and businesses**

#### *Costs to crofters*

124. If the Commission were to charge a fee for the administration of regulatory applications, then crofters would incur associated additional expenses.

## **PART 2 – THE CROFTING REGISTER**

### **Costs to the Scottish Government**

125. The Scottish Government will incur additional costs in relation to the proposal to establish a new Crofting Register to enable crofters to register the extent of, and interests in, their croft which, in turn, would provide them with greater legal certainty over their crofting interests. Presently, the Crofters Commission has legal responsibility for maintaining a Register of Crofts but the Bill provides for the Registers of Scotland (RoS) to take on responsibility for establishing and maintaining a new Crofting Register.

126. The Scottish Government has agreed that it will meet the capital costs associated with establishing the Crofting Register. RoS have estimated that the likely capital costs associated with establishing a Crofting Register would range between £1.05m and £1.6m including VAT. There would also be set-up project costs in the region of £243,285, which would be spread over three years. RoS have also estimated that the annual running costs of the register

would be between £110,000 and £164,000. Whilst the Government would meet the capital and set-up costs of the register, it is intended that the annual running costs will be covered by the receipt of registration fees. RoS have indicated that the register would take up to 2 years to establish, and work to establish the register would only begin upon the Bill receiving Royal Assent.

127. If, for example, the total set-up costs of the register are £1.5m (including project costs outlined in paragraph 126), and the Bill were to receive Royal Assent in summer 2010, then the following payment profile might be expected in the following financial years:

Year payment due	Payment (£)
2010-11	187,500
2011-12	375,000
2012-13	937,500

*Table 3: Capital payment profile of Crofting Register*

128. This payment profile assumes that first payment would be made upon the implementation of the design phase of the register, expected in 2010. It is anticipated that the next payment will be due at the beginning of the design phase in 2011. The final payment would be due to commence the delivery of the register in 2012.

129. The running costs will depend on the level of automation and e-enablement that could be delivered by the system. The following two tables outline the anticipated receipts from registration and costs to RoS in servicing the register, depending on the level of service charge and the level of registration fee (which is outlined in paragraph 130). The cost of registration will depend upon the service charge RoS is charged by from its contractor, BT, which will vary between 6% per annum and 10% per annum.

	2012-13 (£s)	2013-14 (£s)	2014-15 (£s)
<b>Income</b>	163,930	160,550	152,100
Income from applications – FR	2,535	4,225	8,450
Income from applications – DW			
<b>BT cost</b>	-138,700	-138,700	-138,700
BT service charge			
<b>Staff cost</b>			
RO2 time 0.13 FTE	-4,043	-4,091	-4,139
SO1 time 0.7 FTE	-16,033	-16,259	-16,464
SO2 time 0.26 FTE	-4,956	-5,036	-5,117
<b>TOTAL</b>	<b>2,733</b>	<b>689</b>	<b>3,870</b>

*Table 4: at 10% service delivery charge*

*FR – first registration @ £130 DW – amendment to registration @ £65*

	<b>2012-13</b> <b>(£s)</b>	<b>2013-14</b> <b>(£s)</b>	<b>2014-15</b> <b>(£s)</b>
<b>Income</b>			
Income from applications – FR	100,880	98,800	93,600
Income from applications – DW	1,560	2,600	5,200
<b>BT cost</b>			
BT service charge	-83,220	-83,220	-83,220
<b>Staff cost</b>			
RO2 time 0.13 FTE	-4,043	-4,091	-4,139
SO1 time 0.7 FTE	-16,033	-16,259	-16,464
SO2 time 0.26 FTE	-4,956	-5,036	-5,117
<b>TOTAL</b>	<b>-5,812</b>	<b>-7,026</b>	<b>-10,140</b>

*Table 5: at 6% service delivery charge*

*FR – first registration @ £80 DW – amendment to registration @ £40*

130. Based on the latest information on projected application volumes and current thinking on the registration process, RoS have estimated that the initial registration fee will be between £80 and £130. The projected fee for subsequent registrations would be in the region of £40 to £65. This is considerably lower than the original estimate of £250, which was included in the consultation paper on the draft Crofting Reform (Scotland) Bill. The cost would depend upon the type of registration application, for instance, RoS suggest that if it were possible to register all crofts within a township as part of one registration application then there would be opportunities for economies of scale which would reduce the cost of registration.

131. In order to ensure that all land held in crofting tenure is captured on the Crofting Register, the Government proposes to pay for the mapping and recording of all common grazings across the Crofting Counties. Currently, there are 853 common grazings registered with the Crofters Commission. It is proposed that this exercise would be carried out by Geographical Information System (GIS) experts, recruited on a fixed or other temporary term contract, located within either RoS or the Crofters Commission. A team of two GIS experts could be expected to map details of all the common grazings within 4 years which would cost in the region of £380,000 including travel and subsistence (£280,000 for remuneration plus £100,000 for travel), this will equate to a cost of £95,000 per annum for four years and this work is expected to begin in 2012-13. The costs of remuneration are based upon the Scottish Government pay range for grade B2 which averages £35,000 per annum.

132. It is not anticipated that there will be an additional cost to the Commission for processing registration applications to the Crofting Register as staff time currently dedicated to the maintenance of the Register of Crofts will be redistributed to processing registration applications for the Crofting Register. The Bill gives the Commission responsibility for considering certain information contained in each registration application and, if content, the registration application and the registration payment would be passed to RoS. Based upon the average number of regulatory applications to the Commission which would require registration, it is anticipated that there will be in the region of 1,300 applications for either a first registration to the Crofting Register, or for a subsequent amendment, per annum.

### **Costs to local authorities**

133. It is not anticipated that there will be any cost to local authorities.

### **Costs to other bodies, individuals and businesses**

#### *Costs to the Scottish Legal Aid Board*

134. Legal aid would be available to crofters in the event of an appeal against a croft boundary. Initial advice and assistance may be provided by the solicitor subject to a test of financial eligibility carried out by a solicitor. Civil legal aid for representation before a court may also be available to individuals provided they meet three statutory tests contained in the Legal Aid (Scotland) Act 1986: financial eligibility, reasonableness and probable cause. The Scottish Legal Aid Board assesses each application on its own merits and, if it is satisfied that an application meets the statutory tests, then civil legal aid will be granted. Further costs could therefore be incurred by the Government if a higher number of crofters access legal aid to help pay for the cost of any boundary disputes arising from the establishment of the Crofting Register.

135. Whilst the average legal costs to both parties will vary depending on a number of issues, including duration of appeal, legal representation and other related factors, the Scottish Legal Aid Board has confirmed that the total expenditure for six cases during 2008-09 involving the Scottish Land Court was £33,934. The average legal aid case cost is £5655. For illustrative purposes, if for instance 2% of all registration applications were appealed, this would result in 26 appeals against croft registrations a year (although this figure would reduce over time as the registered croft boundaries increased). Assuming that 20 crofters were eligible for at least a proportion of the cost of their regulatory fees through legal aid, and the average cost is £5655 then the gross cost to the fund would be around £113,000. Prior to the recent extension of civil legal aid financial eligibility limits, around 75% of people had no contribution to pay towards the cost of their case. The minimum net cost to the fund would therefore be £84,750. Of those who have to pay a contribution, an applicant with a disposable income of £15,500 would have to pay a contribution of £5000 which on average would meet nearly 100% of the legal costs. If the assisted person was awarded expenses, the cost to the Fund would be even lower than the estimated net cost to the Fund.

136. However, the number of appeals and their respective costs are difficult to quantify and the Government recommends that croft boundaries are identified in consultation with landowners and other persons with an interest prior to registration in order to reduce the likelihood of appeals.

#### *Costs to crofters*

137. Crofters would incur individual costs associated with registering their croft on the Crofting Register. 87 written responses to the consultation outlined concern associated with the cost of paying for the registration of their croft, particularly as there is currently no cost associated with updating the existing Register of Crofts. However, it is now estimated that the cost of registering a croft would be between £80 and £130, which is significantly lower than the estimated cost of £250 which was included in the consultation paper on the draft Bill. The regulatory trigger points which would require registration might only occur once in a generation, so the cost of registration might not be incurred until 30 years or so after the register is

established. RoS have estimated that any amendments to the Crofting Register would be in the region of £40 to £65, half the cost of an original application. It might also be feasible for RoS to charge a variable registration fee, as opposed to a flat registration fee, according to the acreage of the croft or to consider amending costs for the registration of multiple crofts.

138. It is proposed that the Crofting Register is open to public access and RoS anticipate that viewing the Register will be free of charge. It is likely, however, that RoS will charge for any extracts from the Crofting Register and these charges would be in line with other registers, currently set at £8 for a plain copy or duplicate and £15 for an official extract.

139. There may be a cost to the crofter if they were involved in a boundary dispute which is heard by the Scottish Land Court as the court may award costs to the successful party in an appeal. The costs associated with court action have been outlined in paragraph 135.

#### *Costs to landowners*

140. Landowners will incur additional costs as a result of the Crofting Register proposal. There are currently two main types of landowners in crofting. Where a tenant crofter purchases their croft they become an owner-occupier and any successor in title to that croft will be an owner-occupier. The second type of landowner is the more conventional type of landowner, who is landlord to a number of tenant crofters. Occupation of the croft distinguishes these two types of landowners. The transfer of ownership of any land on which a croft is situated would act as a trigger which would require the details of any crofts on this land to be registered in the Crofting Register.

141. It is anticipated that the cost for an owner-occupier registering their croft on the Crofting Register will be small as the boundary of their croft and associated information will already be contained on the Land Register. Costs for traditional landowners would be similar to that for a crofter, i.e. in the region of £80 to £130 per croft registration as information on their extent of their estate will be held on the Land Register, rather than the boundaries of individual crofts. Where an estate comprises a large number of crofts, this may represent a significant amount. However, it is considered that the landowner will know the extent of the croft for which they receive rent and may benefit from reduced fees where they register all crofts in an estate in one transaction. The policy is that whoever triggers the change in the extent or interests in a croft should pay for the cost of registration, irrespective of whether they are the tenant or the owner of the land.

#### *Costs to the Scottish Land Court*

142. The Scottish Land Court could incur some additional costs as a result of the proposal to enable persons with an interest to appeal against a provisional registration on the Crofting Register. The Crofting Reform etc. Act 2007 provided the Scottish Land Court with the power to declare the boundary of a croft in the case of a dispute; this provision was included in order to reduce the scope for expensive boundary disputes and lessen the administrative burden on the Court. As a result, the Scottish Land Court hears on average 6 croft boundary appeals per annum, with an average cost to the Court in the region of £3000 per appeal. In order to reduce the number of boundary disputes considered by the Scottish Land Court as a result of registration to the Crofting Register, it is advised that crofters discuss their registration application with

persons with an interest to reduce the instances in which an appeal might be made against the registration. Based upon historical regulatory data from the Crofters Commission, it is anticipated that in the first couple of years there could be up to 1300 registration applications to the Crofting Register a year, after which, there will be a mix of new applications and registration amendments. It is difficult to project the anticipated number of appeals to the Scottish Land Court, however, if 2% of registration applications are appealed, the number of croft boundary hearings undertaken by the Scottish Land Court would increase to 26, with a projected cost of £78,000 to the Court.

### **PART 3 – DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS**

#### **Costs to the Scottish Government**

143. In 2009, the Government provided the Crofters Commission with additional resources of £100,000 to step up action to address absenteeism and neglect. It achieved this by redirecting resources previously supplied to the Crofters Commission on crofting development. A budget transfer of the equivalent resource was made to Highlands and Islands Enterprise from the general Crofting Assistance budget to cover expenditure on crofting development. It is anticipated that this additional resource will be used to provide for more proactive action on absenteeism and neglect. The Commission may use any income it recovers from regulatory charges to increase activity in this area. It is accepted that the amount of work the Commission will be able to undertake in this area will be constrained by the level of resources at its disposal. It is anticipated that more pro-active regulation of crofting will prove to be a deterrent to breaches of crofting regulation in the longer term, with corresponding reductions in costs.

144. A more proactive approach by the Commission to enforcing crofting regulation may result in an increase in the number of appeals heard by the Scottish Land Court against the Commission. It is not possible to predict accurately expected appeal costs to the Commission as this will depend on a number of factors, including: the number of appeals in which the Commission is involved; whether or not the Commission actively participates in the appeal process; and whether the appeal is disposed of by written submissions or following a hearing before the Court. The costs associated with court action have been outlined previously.

145. However, the increase in appeals may not necessarily result in an increase in costs to the Commission, as the Commission is now producing more comprehensive and detailed notes explaining decisions on contentious applications in order to avoid unnecessary court action.

146. Changes being made in respect of assignations and bequests are expected to have no significant impact on the Commission's budget due to the extremely low number of objections raised in relation to bequests. The Commission may currently consider the assignee's intention in respect of non-family assignations and it is not expected that the extension of this to family assignation will result in any significant resource implications.

#### **Costs to local authorities**

147. It is not anticipated that there will be any cost to local authorities.

## **Costs to other bodies, individuals and businesses**

### *Costs to the Scottish Legal Aid Board*

148. Legal aid would be available to crofters in the event of contacts made to them in relation to absenteeism and neglect for advice and assistance provided by a solicitor, subject to a test of financial eligibility carried out by a solicitor. As outlined in paragraph 134, this depends on the eligibility of the crofter to receive legal aid. Further costs could therefore be incurred by the Government if a number of crofters access legal aid to help pay for the cost of legal advice and representation in relation to absenteeism and neglect. The costs associated with legal action have been outlined previously although they may vary significantly depending on a number of issues.

### *Costs to the Scottish Land Court*

149. Also, where there is an increase in appeals against regulatory decisions as a result of a more pro-active Commission in addressing absenteeism and neglect, notwithstanding attempts by the Commission to limit legal challenge, it is assumed that this could result in a potential increase in the administrative costs for the Land Court of an average of £3,000 per appeal, as indicated at paragraph 142. However, costs per annum will clearly depend on the number of appeals lodged.

### *Costs to crofters*

150. Crofters would incur individual costs associated with any appeals made to the Land Court in respect of absentee or neglect action taken against them. The costs of legal action have been outlined previously in paragraph 135. Initially these costs would be limited to the statutory contribution levels associated with legal aid or to the cost of private legal representation if they fall outwith the scope of legal aid. If successful in their appeal, crofters would also be liable to pay any statutory “clawback” costs associated with legal aid from the asset (croft) successfully retained or, if private legal action is used, to pay any costs awarded to the Commission by the Land Court.

## **PART 4 – FURTHER AMENDMENTS OF THE 1993 ACT**

### **Costs to the Scottish Government**

151. There may be some nominal staffing costs at the Crofters Commission associated with training in relation to the new policies and administration thereof, but this is expected to be subsumed within the existing workload as with any other training and refining of policy matters. However, as the Commission will be expected to take a more rigorous approach to decrofting, it is expected that costs relating to defending appeals against Commission decisions may increase, as raised in paragraph 144.

### **Costs to local authorities**

152. It is not anticipated that there will be any cost to local authorities.

## **Costs to other bodies, individuals and businesses**

### *Costs to crofters*

153. The purpose of the new provisions on decrofting and resumption is to limit speculation on croft land. The effect of the Commission being able to reject a decrofting application where planning permission has already been granted may limit the potential for individual crofters to profit from multiple house developments on croft land where it is considered to be to the detriment of crofting in the area. Some may wish to appeal decisions of the Commission in this regard and would incur costs associated with going to the Land Court as outlined in paragraph 135.

154. If the Commission were to charge a fee for regulatory applications (including decrofting applications), as described under Part 1 of this Bill, crofters would incur expense in submitting a decrofting application.

155. Section 14(3) of the Crofters (Scotland) Act 1993 presently provides for the person who has acquired croft land, or a member of that crofter's family who has since obtained title to that land, to pay the landlord one half of the profit made following the disposal of the land to anyone who is not a family member within 5 years of the purchase. It is anticipated that increasing this period to 10 years will reduce the attractiveness to crofters of developing their crofts for housing that is not intended for their family. However, some crofters may continue to do this and, in doing so, will need to share the profits between years 6 and 10 which would not presently be the case.

### *Costs to landowners*

156. Landowners wishing to resume land under section 20 of the 1993 Act should expect to incur similar costs to those presently incurred, i.e. legal costs of preparing an application to the Scottish Land Court, and compensation to the crofter for the loss of the land (or letting other land of equivalent value) and a share in the value of the land resumed as determined by the Court. The speculation provisions seek to amend the issues which the Land Court will take into account in determining an application to resume land and have no bearing on application costs for the landowner.

157. Extending the period in which profit from development on decrofted land is shared with the landlord, as described in paragraph 155 above, provides a potential income during years 6 to 10 following development. However, the effect of these provisions is intended to suppress the attractiveness of developing croft land and, therefore, it is considered that this potential income will only be realised in a few cases.

### *Costs to the Scottish Land Court*

158. As above regarding the Land Court, where there is an increase in appeals against decrofting decisions as a result of a more pro-active Commission in addressing speculation on croft land, notwithstanding attempts by the Commission to limit legal challenge, it seems reasonable to assume a potential increase in administrative costs for the Land Court. However, this will clearly depend on the number of appeals lodged.

## SUMMARY

159. The following table provides a summary of the known additional costs associated with each part of the Bill.

<b>Proposed change</b>	<b>2010-11 (£s)</b>	<b>2011-12 (£s)</b>	<b>2012-13 (£s)</b>
Establishment of an electoral roll (Crofting Register, paragraph 118, Scottish Government)	+25,000	-	-
Cost of Commission's members (Reform of the Crofters Commission, paragraph 119, Scottish Government)	-	+37,000	+37,000
Costs of elections to Commission (Reform of the Crofters Commission, paragraph 123, Scottish Government)	-	+100,000	-
Establishment of Crofting Register (Crofting Register, paragraph 127, Scottish Government)	+187,500	+375,000	+937,500
Costs of registering on the Crofting Register (Crofting Register, average of tables 4 and 5, crofters and landlords)	-	-	+134,453
Common grazings mapping exercise (Crofting Register, paragraph 131, Scottish Government)	-	-	+95,000

*Table 6: Summary of known costs associated with each part of the Bill where quantified (relevant paragraph of Financial Memorandum in brackets)*

*Note: Costs to the Scottish Land Court and the Scottish Legal Aid Board are not included in the above table. The figures in the body of the Financial Memorandum are for illustrative purposes only and it is not possible to predict with any certainty the likely costs.*

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

160. On 9 December 2009, the Cabinet Secretary for Rural Affairs and Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Crofting Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

161. On 8 December 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Crofting Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Crofting Reform (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 9 December 2009*

# **CROFTING REFORM (SCOTLAND) BILL**

## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

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